INFORMATION BULLETIN # 95

INCOME TAX

JULY 2006

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SUBJECT: Hoosier Business Investment Tax Credit

REFERENCES: IC 6-3.1-26

INTRODUCTION

The Hoosier business investment tax credit (HBITC) was originally passed in 2003 effective for taxable years beginning after December 31, 2003. The statute was amended during the 2005 session of the Indiana General Assembly to expand the entities eligible for the credit, to change the calculation of the credit, and expand the definition of qualified investment. Certification of an applicant is approved by the Indiana Economic Development Corporation (IEDC).

I. QUALIFIED ENTITIES

A taxpayer is defined as an individual, corporation, partnership or other entity that has a state tax liability.

Pass through entities are defined as S Corporations, partnerships, trusts, limited liability companies, or limited liability partnerships. If a pass through entity does not have state tax liability against which the tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to the credit.

II. QUALIFIED INVESTMENTS

The qualified investment is determined to be the amount of a taxpayer's expenditure in Indiana for any of the following items:

- The purchase of, costs associated with modernization of, or the construction of facilities and equipment used for telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, finishing, distribution, transportation, or logistical distribution.

- Costs associated with the purchase of machinery, equipment, or special purpose buildings used to make a motion picture or audio production. Motion picture or audio production includes a feature length film, video, television services, commercial, music video or audio recording. The term also includes a corporate production for any combination of theatrical, television, or other media viewing or a television pilot.

Qualified investments include expenditures for onsite infrastructure improvements, and costs associated with retooling existing machinery and equipment. Costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry are also qualified investments.

Property that can be readily moved outside of Indiana does not qualify as a qualified investment.

All qualified investments must be made during the period from January 1, 2004 through December 31, 2011 effective for taxable years beginning after December 31, 2003.

III. CREDIT CALCUALTION PRIOR TO MAY 15, 2005

Prior to May 15, 2005 the credit in a taxable year equaled the lesser of thirty percent (30%) of the qualified investment or the taxpayer's state tax liability growth. The following provisions apply to HBITC certifications for a pass through entity prior to May 15, 2005. "State tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus the greater of the taxpayer's state tax liability in the most recent prior taxable year or the taxpayer's base state tax liability. "Base state tax liability" means a taxpayer's state tax liability in the taxable year immediately preceding the taxable year in which a taxpayer makes a qualified investment. The base state tax liability amount shall not be adjusted as a result of any net operating loss that could be carried back to the base year. The taxpayer can file an amended return to use a net operating loss deduction, but it will not change the amount of the base state tax liability for purposes of calculating the HBITC.

> **EXAMPLE:** A regular C Corporation (taxpayer) made a qualified investment of $2,000,000 in 2004. The taxpayer had a state tax liability of $350,000 in 2003 (base state tax liability). The taxpayer's state tax liability in 2004 was $520,000. The state tax liability growth is the difference between the current year liability and the base state tax liability ($520,000-350,000=$170,000). The amount of the credit for the taxable year is the lesser of $600,000 (30% of the qualified investment (30% multiplied by $2,000,000=$600,000)), or the state tax liability growth of $170,000). The remaining tax credit balance of $430,000 can be carried forward to future tax years.

A pass through entity by definition is not subject to the adjusted gross income tax, and therefore does not have a state tax liability to calculate a base state tax liability or the amount of state tax liability growth, but the legislation creating the HBITC provides that pass through entities shall be eligible for the credit.

In order for a pass through entity to claim a credit, the pass through entity will calculate a state tax liability based on its Indiana taxable income and the tax liability that would be incurred based on the imputed tax liability of its partners, shareholders, or members.

> **EXAMPLE:** A limited liability company has individuals and a regular C Corporation as members. The individuals represent 80% of the ownership and the Regular C Corporation represents 20%. The members' imputed rate is 4.42% (.8 multiplied by .034) for the individual members and (.2 multiplied by .085) for the Regular C member. This is arrived at by taking the individual members' percent of ownership multiplied by the individual income tax rate, plus the Regular C member's percent of ownership multiplied by the corporate adjusted gross income tax rate.

After the determination of the imputed tax rate is made for the base year, the rate shall be applied to the Indiana taxable income to arrive at the base state tax liability amount. The imputed rate will be recalculated on an annual basis to be used to calculate the state tax liability growth amount and the amount of credit that the entity is eligible to claim.

IV. CREDIT CALCULATION FOR CERTIFICATIONS AFTER MAY 15, 2005

SEA 496-2005 amended the HBITC statute to change the calculation of the credit by eliminating the state tax liability growth as a calculation to be used in determining the amount of the credit that an entity is eligible to receive.

The amount of credit that may be claimed by a taxpayer for a taxable year is a percentage determined by the IEDC, not to exceed ten percent (10%) of the amount of the qualified investment made by the taxpayer during the taxable year.

V. ADMINISTRATION OF THE CREDIT

A. Application

A taxpayer that proposes a project to create new jobs or increase wage levels in Indiana shall apply to the IEDC before the taxpayer makes the qualified investment.

B. Amount of Credit

The IEDC shall certify the amount of the qualified investment that is eligible for a credit. The IEDC may grant a credit that is up to ten percent (10%) of the amount of qualified investment that is directly attributable to expanding the workforce in Indiana.

C. Claiming the Credit

A taxpayer claiming a credit is required to submit to the Department a copy of the certificate of verification when claiming the credit on the tax return filed by the taxpayer. The certificate of verification shall be supplied to the taxpayer by the IEDC.

D. Carry Forward of Credit

A taxpayer is allowed to carry forward an unused credit for the number of years determined by the IEDC, but not to exceed nine (9) consecutive taxable years, beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment.

E. Expiration and Time Limitation of Credit

The credit applies to qualified investments made for taxable years beginning after December 31, 2003, and ending on or before December 31, 2011. A taxpayer is not prevented from carrying forward an unused credit to a taxable year beginning after December 31, 2011 for a qualified investment made before January 1, 2008.

For further information concerning this tax credit, contact the Indiana Economic Development Corporation at One North Capitol, Suite 700, Indianapolis, IN 46204.

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